IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

FAO(HMA) NO.3 of 2003

Judgment Reserved on:17.5.2007

Date of Decision: 22.5.2007

Aruna Devi ……Appellant

Versus

Onkar chand …… Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No

For the Appellant : Mr. Ajay Sharma, Advocate.

For the respondent : Mr. Ajay Chandel, Advocate

Kuldip Singh, J

The wife is in appeal against judgment, decree dated 6.7.2002 passed by learned Addl. District Judge-I, Kangra at Dharamshala in Hindu Marriage Act case No.23-D/99, dissolving the marriage by decree of divorce . The parties for convenience sake are referred in the same manner as in the impugned judgment and decree.

The facts in brief are that the petitioner-husband filed petition under Section 13 of the Hindu Marriage Act, 1955, for dissolution of marriage of the parties on the grounds of cruelty. The further case is that the marriage between the parties was solemnized on 18.2.1987. The parties lived together for total period about 1½ years and a son Vashist Kaundal was born on 7.11.1987 from the wedlock. It is the case of the husband that the respondent from the very beginning used to stay out of the matrimonial home without the consent of the petitioner. The wife used to say that she had unwillingly undergone the marriage for the

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W*hether reporters of Local Papers may be allowed to see the Judgment? Yes*

sake of her parents and the petitioner is not of her choice. The petitioner requested his in-laws to counsel the respondent. The respondent since August, 1988 is residing at her parents home and is not willing to join the matrimonial home. The respondent many times both in side and out side the Court offered to join the petitioner but she actually never honoured her words. The respondent does not want to live with the petitioner. It is also the case of the petitioner that earlier a divorce petition was filed by him in the year 1995 and a decree of divorce was passed in his favour on 30.4.1996. The wife later on filed application under Order 9 rule 13 CPC for setting aside the exparte decree dated 30.4.1996. The respondent agreed to accompany the petitioner as such the petitioner agreed to set aside the exparte decree. But despite that she did not join the petitioner. The petitioner along with some respectable persons of the village approached the respondent but she refused to accompany the petitioner. A notice dated 25.9.1998 was also sent to the respondent. The respondent has deserted the petitioner.

On account of the conduct of the respondent, the petitioner has been humiliated in the society. He has to live alone and do all domestic works. The petitioner has been deprived of matrimonial life, peace and company which is mental cruelty. The respondent has not only deserted the petitioner but she has treated him with cruelty also The respondent is working in the juice factory at Nagrota Bagwan. The parents of respondent want to enjoy her complete earning as such they are also hurdle in the matrimonial ties of the parties.

The petition has been contested and respondent has filed reply, in which she has taken preliminary objections of lack of cause of action, locus standi of the petitioner to file the petition. The petitioner himself is guilty. He has withdrawn from the society of the respondent of his own.

He has treated the respondent with cruelty. The petition is based on false, flimsy grounds. On merits, birth of the son was admitted . It has been alleged that petitioner turned out the respondent from the matrimonial home after giving her severe beatings and also levelling allegation of unchastity . The exparte decree was manipulated by the petitioner and on the application of the respondent, the exparte decree was set aside. The respondent has alleged that the petitioner has deserted and treated her with cruelty also. The petitioner never contributed any money for the welfare of the respondent and for the minor son living with the respondent.

The learned Addl. District Judge allowed the petition, hence, the appeal.

I have heard learned counsel for the parties and have also gone through the record.

The petitioner Onkar Chand appeared as PW-1 and has supported his case generally. He has deposed that for about 2/3 months after the marriage their relations were cordial. Thereafter without telling him and his family members the respondent used to leave matrimonial home. He used to enquire from relations and searched her here and there, some times, she was found at her parents house and some times at her maternal grand father's house. He used to bring her back. After staying about a week she used to leave the matrimonial home by repeating the same again. On 18.8.1988, her parents visited his house in his absence and took respondent and her son with them. He approached the respondent along with many co-villagers but she refused to return to matrimonial home. The respondent and her parents used to misbehave with him. In 1995, he filed divorce petition and on 30.4.1996 exparte decree was passed in his favour. She filed an application for setting aside the exparte decree. He compromised the matter as

respondent agreed to come back to the matrimonial home on 17.9.1998. He went to her parents house on that date but she did not accompany him. He again went on 20.9.1998 to take her back but again she refused. The parents of the respondent told that she was employed in juice factory, they have constructed a separate house for her and therefore, they would not send the respondent. She said that she married unwillingly. She told that she does not want to live with him. A notice Ex.PW-1/A was issued to respondent on 29.9.1998 but despite that the respondent did not join him. On account of conduct of respondent his life has become a hell and he remains under mental pressure. In cross-examination he has admitted that on application under Section 125 Cr.P.C. maintenance of Rs.200/- per month has been fixed. He has denied that respondent was living with him when he obtained exparte decree against her. He has denied that he does not want to keep the respondent.

PW-2 Viyas Dev has stated that respondent for about last 13 years was living with her parents. He once or twice went with the petitioner for bringing respondent but she refused to live with the petitioner.

PW-3 Desh Raj has stated that he went twice with petitioner to bring respondent but she refused to accompany the petitioner. She told that she has constructed a house at her parents place. She also said that she does not like petitioner.

Respondent Aruna Devi appeared as RW-1. She has deposed that 1 ½ years after the marriage, her husband started beating her. She and her son under compulsion were living with her parents. The petitioner refused to allow her to stay with him. A meeting was called of the relations to settle the dispute but petitioner refused to keep her. The petitioner used to beat her when she tried to stay with him at matrimonial

home. In cross-examination, she has admitted that for the last 13 years she was residing at Balghar and during this period the petitioner approached her for taking back. She admitted that she did not accompany him. She failed to disclose when she was actually beaten. She has stated that she lodged a report of beating in the Police Station. Ex.PW-1/C order dated 16.9.1998 whereby exparte decree dated 30.4.1996 was set aside, Ex.PW-1/E, statement of Onkar Chand, Ex.PW-1/D order dated 16.9.1998, dismissing the earlier petition for divorce on the basis of compromise and Ex.PW-1/F, statement of Aruna Devi have also been placed on record.

It has been proved on record that the parties are living separately since long and respondent-wife has admitted that they were living separately for the last 13 years when she made the statement. It has been proved that petitioner husband, several times approached the wife for bringing her back but every time she refused. The husband earlier filed a divorce petition, in which divorce was granted but on the application of wife for setting aside exparte decree of divorce the earlier petition was compromised on the assurance of the wife that she would join the husband but she again refused to accompany the husband. The husband has specifically stated that because of the conduct of respondent he is feeling humiliated in the society and he remains under mental strain. The wife has stated that she was given beatings by husband. She has further stated that a meeting of the relations was also called to settle their dispute. She could not give the details of the meeting. She has stated that she lodged a report with the police but that was not proved. The husband was not cross-examined regarding the alleged beating given by him to the wife nor any question was put to him that in the meeting of the relations the husband refused to keep her. The wife has not produced any witness in order to corroborate her

version. The husband has proved his case by leading independent evidence. It is established on record that marriage between the parties is dead. The wife has no animus to live with the husband.

The conduct of the respondent discussed above has established that respondent has treated the petitioner with cruelty. The learned trial Court has rightly appreciated the material available on record. It has been proved on record that the respondent-wife has treated the petitioner-husband with cruelty. The wife has failed to make out any case for interference.

In view of above discussion the appeal is dismissed. The impugned judgment and decree are upheld. No order as to costs.

(Kuldip Singh)
Judge

May 22, 2007
(sks)